

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in compliance with D.N.J. LBR 9004-1(b)

Jerrold S. Kulback, Esq.
ARCHER & GREINER, P.C.
1025 Laurel Oak Road
Voorhees, NJ 08043-3506
Telephone: (856) 795-2121
Facsimile: (856) 795-0574
Email: jkulback@archerlaw.com

Counsel for HCL Technologies Limited

In re:

Bed Bath & Beyond Inc., et al.,

Debtors.¹

Case No. 23-13359

Chapter 11

Judge: Hon. Vincent F. Papalia

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF HCL
TECHNOLOGIES LIMITED TO NOTICE TO CONTRACT PARTIES TO
POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

HCL Technologies Limited (“HCL”), and one or more of its affiliates, by and through its counsel, Archer & Greiner, P.C., submits this limited objection and reservation of rights (“Objection”) to the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [ECF No. 714] (the “Assumption Notice”)² filed by the above-captioned debtors (the “Debtors”), and in support thereof, respectfully states as follows:

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 650 Liberty Avenue, Union, New Jersey 07083.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Cure Notice.

1. On April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

2. On April 25, 2023, the Court entered the *Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, (D) Approving the Form and Manner of Notice Thereof, (E) Approving the Form APA, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief* [ECF No. 92] (the “Bidding Procedures Order”).

3. The Bid Procedures Order established procedures related to cure amounts in connection with the assumption and, if necessary, assignment of executory contracts.

4. Debtor, Bed Bath & Beyond Inc., as licensee, and HCL, as licensor, are parties to a Master License Agreement and that certain *Program License and Support Order Schedule* dated December 29, 2022 (the “License and Support Contract”). Pursuant to the Master License Agreement and the License and Support Contract, HCL provides product licenses and services to the Debtors.

5. On June 13, 2023, the Debtors filed the Assumption Notice, listing “HCL Passport Advantage 2023 Renewal” as an executory contract that may be assumed and assigned in connection with the sale of the Debtors’ assets.

6. The Assumption Notice proposed a cure amount of \$75,165.52 (the “Proposed Cure Amount”) in connection with the potential assumption and assignment of the “HCL Passport Advantage 2023 Renewal” contract.

7. The Proposed Cure Amount is incorrect. HCL is working expeditiously in order to determine all amounts owed by the Debtors but at this time has identified three categories of amounts owed by the Debtors to HCL under the License and Support Contract, which together amount to no less than \$2,782,823.03:

(i) *Contract Fees:* Pursuant to Section 3 of the License and Support Contract the Debtors were required to pay \$216,500.03 (excluding taxes) within 30 days due of the date of invoice. The Debtors have paid \$0.00. Overdue amounts payable under the License and Support Contract bear interest from the original due date at the rate of one percent (1%) per month or maximum legal rate, whichever is less.³

(ii) *Present Compliance Amounts:* Pursuant to Section 6 of the License and Support Contract, HCL explicitly reserved all rights to ensure compliance with current and formerly licensed entitlements. Historically, the Debtors have exceeded their entitlements and HCL believes the Debtors continue to exceed their entitlements and owe additional amounts under the License and Support Contract.

(iii) *Past Compliance Amounts:* Pursuant to Section 2 of the License and Support Contract, HCL and the Debtors agreed to negotiate and execute replacement terms of the Master License Agreement by March 1, 2023, in order to provide for the Debtors past over usage of their entitlements. The Debtors owe HCL \$2,566,323.00 for this past over usage of their entitlements with regards to the licenses under the Master License Agreement.

³ The Debtors' post-petition use of the entitlements without payment may give rise to an administrative claim. All rights of HCL are reserved.

Reservation of Rights

8. HCL reserves the right to amend the cure amount to include additional amounts that may be or become due and to otherwise supplement this Objection, and further reserves any other rights that it may have under applicable law.

WHEREFORE, HCL respectfully requests that the Court not permit the assumption and/or assignment of the License and Support Contract until the Debtors and HCL have agreed to include the Master License Agreement and provide for the proper cure amount, which is no less than \$2,782,823.03 and grant such other and further relief as is just and equitable.

Dated: Voorhees, New Jersey
June 26, 2023

ARCHER & GREINER, P.C.

By: /s/ Jerrold S. Kulback

Jerrold S. Kulback (NJ #023071999)

1025 Laurel Oak Road

Voorhees, New Jersey 08043

Tel: (856) 795-2121

Fax: (856) 795-0574

Email: jkulback@archerlaw.com